**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CR No. 5537 of 2000**
**Date of Decision: 24.01.2007**

Sudarshan Singh & Ors. ...Petitioner

Vs.

Pritpal Singh & Ors. ...Respondents

**CORAM Hon'ble Mr.Justice Vinod K.Sharma**

Present: Mr. M.L.Sarin, Senior Advocate,
with Mr.Kabir Sarin, Advocate,
for the petitioners.

Mr.R.C.Setia, Senior Advocate,
with Mr.Vishal Ranjan, Advocate,
for respondent No.1.

**Vinod K.Sharma, J**. (Oral)

This order shall dispose of two civil revision petitions bearing CR No.5537 of 2000 titled Sudarshan Singh & Ors Vs. Pritpal Singh & Ors. and CR No.95 of 2001 titled Ravinder Beri Vs. S.Prithpal Singh as they arise from a common judgment of the learned lower appellate court.

By way of present revision petitions the petitioners have challenged the order passed by the learned Additional District Judge, Amritsar setting aside the order passed by the learned Additional Senior Sub Judge, Amritsar dated 18.5.1990 setting aside the sale in favour of Pritpal Singh respondent No.1.

In a suit for partition, a preliminary decree was passed in

favour of the plaintiff and for implementation of the said decree a Local Commissioner was appointed who submitted his report that the property was not being capable of partition by means and bounds and therefore, was required to be auctioned. The report of the Local Commissioner was accepted and the property was put to auction on 17.8.1987. Respondent No.1 offered to purchase the property on consideration of Rs.3,04,500/- and the said amount stood deposited in the Court. M/s Rana & Company filed objections under Order 21 Rule 90 of the Code of Civil Procedure. However, they subsequently, did not appear and said objections were dismissed.

The objections were also filed by Smt.Puri, Mrs. Asha Seth and Ms.Ravinder Berry. Objections were also filed by Smt.Rupa Beri, the deceased plaintiff who was thereafter represented by Mrs.Rita, Mrs. Renu Talwar and Mrs. Madhu, her legal heirs.

Auction was challenged on number of grounds, including the allegations of material irregularities and fraud in publication and conduct of sale. It was also claimed that the particulars of the disputed property were not mentioned in the alleged proclamation of sale or by way of advertisement in the newspaper. It was also claimed that in fact, no auction had taken place and also the fact that the property was worth much more than the amount on which it was auctioned.

The learned Executing Court besides setting aside the sale on the ground of irregularities and conduct of auction also set aside the sale being in violation of Section 6 of the Partnership Act. The relevant portion of the orders are reproduced below:

"30. After a careful perusal of the material placed on the file, I am of the considered opinion that this being a sale under Section 2 of the Partition Act, the court was bound to fix the reserve price of the disputed property which was to be sold by way of public auction. The fixation of reserve price is necessary in all cases of sale under the Partition Act and omission to fix the reserve price is a material irregularity and if no loss is proved to have been caused to the plaintiff or to the other objectors and the JDs, then the sale in question cannot stand and the court cannot confirm the sale in question held on 17.8.87. The plain reading of Section 6 of the Partition Act reads as under:-

"6. Reserved bidding and bidding by shareholders:-

(1) Every sale under Sec. 2 shall be subject to a reserved bidding and the amount of such bidding shall be fixed by the court in such manner as it may think fit, and maybe varied from time to time.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit, or as to setting off of accounting for the purchase money or any part thereof instead of paying the same, as to the Court may seem reasonable.

(3) If two or more persons of whom one is a share holder in their property, respectively advance the same sum at any bidding at such sale, such bidding shall be

deemed to the bidding of shareholders.

31. A perusal of section 6 (1) of the Act ibid shows that it is mandatory for the court to fix the reserved bidding. It is further proved that any of the shareholder is at liberty to bid in the sale on such terms as to non-payment of the deposit or as to setting off for accounting for the purchase money or any part thereof instead of paying the same as to the court may seem reasonable. Object of the fixing of the reserve bidding in the sale proclamation is that the intending purchaser may form an idea of the value of the property to be sold and also to decide as to whether they should bid at the sale or not. This has been enacted to ensure a proper sale of a proper price as such the court is under an obligation to fix the reserve bidding. Admittedly, in the sale proclamation issued by the court to the court auctioneer Ex.AP1, the reserve bidding was fixed by the court. It is settled law that no party can be made to suffer on account of the wrong done by the court. The provisions of fixing the reserve bid is a mandatory one. Its non-compliance is fatal to the sale proceedings conducted by the court auctioneer and sale is nullity in that event. No doubt the plaintiffs could have taken the plea of non fixing of the reserve bidding before the auction actually took place but on account of non-drawing of the publication of the sale by the court, the plaintiffs were precluded from taking this objection before the sale actually took place. As such, there has been a

material irregularity in the conducting of the sale in question in favour of the auction purchaser on account of the omission on the part of the court to fix the reserve bidding. This is one of the ground for setting aside of the sale in question."

Besides this the learned Executing Court also came to the conclusion that there was no proper proclamation of sale either at the house or at the spot. Auction purchaser, respondent No.1 preferred an appeal against the order passed by the learned Executing Court and the said appeal was accepted primarily on the ground that the objections raised by the objectors were not raised at the time when the proclamation of sale was done and also on the ground that adequacy of the price could not be a ground to set aside the auction/sale by the court. The learned lower Appellate Court further came to the conclusion that no substantial injury was shown to have been caused to the objector so as to set aside the sale. However, the finding of the learned Executing Court qua the sale being in violation of provisions of the Partition Act 1893 were neither reversed nor considered.

Mr. M.L.Sarin, learned senior counsel appearing for the petitioners argued that the learned first Appellate Court has proceeded on the presumption as if the sale was in execution of a decree by the Court and has completely ignored the provisions of the Act.

The contention of Mr. M.L.Sarin, learned senior counsel was that the court duly noticed that the sale was being conducted in terms of Section 2 of the Partition Act, 1893 which reads as under:-

**"2. Power to court to order sale instead of division in**

**partition suits.--**

Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the court that, by reason of the nature of the property to which the suit relates,or of the number of the shareholders therein, or of any other special circumstances,a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders,the court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards,direct a sale of the property and a distribution of the proceeds."

The contention of Mr. M.L.Sarin, learned senior counsel appearing for the petitioners, therefore, was that once the Court has taken notice of the fact that the auction was being conducted in execution of a decree for partition it was incumbent upon the Court to have complied with the provisions of Section 6 of the Act which was mandatory in nature. Section 6 of the Partition Act reads as under:-

**"6. Reserved bidding and bidding by shareholders:-**

(1) Every sale under Sec. 2 shall be subject to a reserved bidding and the amount of such bidding shall be fixed by the court in such manner as it may think fit, and maybe varied from time to time.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit, or as to setting off of accounting for the purchase money or any part thereof instead of paying the same, as to the Court may seem reasonable.

(3) If two or more persons of whom one is a share holder in their property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to the bidding of shareholders.

Mr. M.L.Sarin, learned senior counsel appearing for the petitioners also made reference to Section 7 of the Partition Act which reads as under:-

**"7. Procedure to be followed in case of sales.--**

Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely:-

(1) if the property be sold under a decree or order of the High Curt of Calcutta, Madras or Bombay, in the exercise of its original jurisdiction, the procedure of such court in its original civil jurisdiction for the sale of pro0erty by the Registrar;

(b) if the property be sold under a decree or order of any other court, such procedure as the

> High Court may from time to time by rules prescribe in this behalf, and until such rules are made the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees."

The contention of the learned senior counsel was that Section 7 of the Act which authorises the Executing Court to sell the property for executing of decree for partition of the property itself protects Section 6 of the Act as the words used in the opening of Section 7 are "save as herein before provided". Mr. M.L.Sarin, learned senior counsel, therefore, vehemently argued that in the present case as the sale was in violation of the provisions of Section 6 of the Act, the same was rightly set aside by the Executing Court and therefore, it was not open to the lower appellate court to have reversed the said findings by treating it to be sale by the Court auctioneer.

Mr.R.C.Setia, learned senior counsel appearing for the respondents contended that as the petitioners had taken no objection to the public auction and therefore, it is not open to the petitioners now to challenge the auction and therefore, the learned lower appellate Court was right in setting aside the judgment passed by the learned Executing Court accepting the objections filed by the objectors. Mr. R.C.Setia, learned senior counsel appearing for the respondents further contended that as the respondent-objectors have already deposited the sale consideration and the sale does not suffer from any illegality as envisaged under Order 21 Rules

89 and 90 of the Code of Civil Procedure and nothing has been brought on record to show as to what substantial injury has been suffered by the petitioners herein, the sale in favour of the respondent auction purchaser cannot be set aside. Learned senior counsel further submitted that the price fixed was also adequate as one of the co-sharers had sold the property at this rate and therefore, the price was correct and the auction was ordered in the presence of the counsel for the parties and they having not filed any objection at the relevant time could not challenge the same.

I have considered the arguments raised by the learned senior counsel for the parties and find force in the contentions raised by Mr. M.L.Sarin, learned senior counsel appearing for the petitioners.

The court was bound to conduct the sale in terms of Section 6 of the Act which is mandatory in nature as the opening of Section 7 clearly lays down that the provisions for sale are subject to the preceding Section. The sale was admittedly not conducted as per the provisions of Partition Act, 1893. Lower Appellate Court has not given any reason for setting aside the finding recorded by the learned Executing Court holding that the sale was bad in view of the provisions of the Partnership Act, 1893, therefore, impugned order cannot be sustained.

Accordingly, the revision petition is allowed and the order passed by the learned lower appellate court is set aside and that of the Executing Court is restored with no order as to costs.

**(Vinod K.Sharma)**
**Judge**

**January 24,2007**
**rp**